

Exhibit D

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MLex | Microsoft is exploring options to close Activision deal despite UK block



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Microsoft executives are actively looking at ways to close the company's \$69 billion acquisition of videogame maker Activision Blizzard despite a UK veto on the deal, Mlex has learned. Such a move would almost certainly trigger legal action from the UK's Competition and Markets Authority. Among possible options could be Activision pulling out of the UK, or Microsoft closing the deal and fighting the CMA in court.

Microsoft executives are actively looking at ways to close the company's \$69 billion acquisition of videogame maker Activision Blizzard despite a UK veto on the deal, Mlex has learned.

Such a move would be vanishingly rare where it relates to one of the world's major regulatory jurisdictions and would almost certainly trigger legal action from the UK's Competition and Markets Authority.

The CMA currently has an interim order in place preventing Microsoft from acquiring "an interest in Activision or any of its subsidiaries." It is likely to make that permanent very soon.

In April, Microsoft reacted furiously to the CMA's decision to block the deal after saying its competition concerns over the cloud gaming market could not be resolved (see [here](#)).

The European Commission had similar concerns, but said a Microsoft remedy package resolved them. The US tech giant has also received approval from South Korean and Chinese competition regulators this week.

In the US, the Federal Trade Commission has sued to block the deal, and an administrative trial is scheduled for this summer. For it to stop Microsoft from closing the deal, the FTC would need to persuade a judge in federal court to issue an injunction.

The companies' merger agreement expires on July 18, at which point either could walk away, renew the deal or renegotiate it.

Microsoft has appealed the UK's veto, and this week it saw the trial scheduled for as early as the end of July at the Competition Appeals Tribunal (see [here](#)). A UK judge overrode concerns voiced by the CMA that its legal counsel were not available then, and that it would struggle to properly respond to all evidence submitted by Microsoft in that timeframe.

The surprise speed of the appeal process – the CMA had suggested a trial after the summer – may dampen any calls within the company for it to close the deal regardless of the UK block.

"Our priority is pursuing the appeal process in the UK, and we remain committed to constructive dialogue and solutions to address regulatory concerns," a Microsoft spokesperson said today.

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There are very few examples of companies closing deals over a competition veto from a major jurisdiction. Illumina closed its \$8 billion takeover of Grail just days before Grail could walk away with a hefty break fee, and midway through the EU regulator's scrutiny of the acquisition.

The EU watchdog vetoed the deal and is now preparing to fine Illumina for gun-jumping, and is considering how to force the merger's unwinding.

— Microsoft's options —

Microsoft has hired extra lawyers and has tasked some with examining how it could close the Activision deal, MLex understands.

One option could include Activision exiting the UK for another European country in a bid to remove itself from the CMA's jurisdiction. Its games could continue to be sold via a distributor.

One rub is that any such decision must be taken by Activision to avoid breaching merger laws that stipulate that merging companies must be managed separately and independently until they actually close.

Another option could see Microsoft extend remedies given to and accepted by the European Commission to the UK unilaterally, even though they were rejected as insufficient by the CMA.

The company is also actively contesting the CMA's draft order that would give effect to its veto, banning Microsoft from acquiring an interest in Activision for several years, and vice versa.

The ability of the UK watchdog to impose a global ban solely to address concerns relating to the UK market is at the center of that, MLex understands. Microsoft could challenge the final order in court to seek to narrow its scope, to potentially allow it to close elsewhere in the world.

It's not clear whether that specific point has been appealed to judges before, although Meta's Facebook unsuccessfully appealed an order from the CMA that blocked it from integrating Giphy, which it had already bought, contesting the regulator's territorial reach, among other pleas.

Alternatively, Microsoft could seek to close the transaction and argue that the order was illegal in its defense when sued by the CMA.

In mid-May, a reporter for CNBC asked Microsoft chief executive Satya Nadella whether the company could close the deal and just stop selling Activision's products in the UK. The CEO responded: "Let's wait for it all to play out."

Asked by MLex on May 12 whether it could close around the UK, a representative of Microsoft said it was a "complicated question," but "at some point we may need to think about it."

A spokesperson from Microsoft advised against reading too much into the comments.

Please email editors@mlex.com to contact the editorial staff regarding this story, or to submit the names of lawyers and advisers.

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Areas of Interest: Mergers & Acquisitions

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